

Review Commission Rules of Procedures on October 1, 1976. On January 11, 1984, New Mexico submitted revised Review Commission Rules of Procedures which parallel 29 CFR part 2200. The revised rules were approved by the Assistant Secretary on October 30, 1984.

(e) In accordance with 29 CFR 1952.363(d), New Mexico submitted documentation on December 20, 1977, showing that its enforcement program was operational effective June, 1976. The supplement was approved by the Assistant Secretary on October 30, 1984.

(f) In accordance with 29 CFR 1952.363(f), New Mexico by letter dated December 20, 1977, submitted a plan supplement regarding its development of an occupational health and safety program for public employees in June, 1976. A revision thereto was submitted on February 28, 1980. These supplements were approved by the Assistant Secretary on October 30, 1984.

(g) New Mexico regulations for recording and reporting occupational injuries and illnesses parallel to 29 CFR part 1904 which were originally promulgated on August 8, 1975, were revised on February 19, 1979, June 1, 1981, and October 26, 1983. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(h) New Mexico regulations for inspections, citations and proposed penalties parallel to 29 CFR part 1903 originally promulgated on August 8, 1975, were revised on April 14, 1981; May 10, 1981; May 27, 1981; June 1, 1981; April 6, 1982; May 11, 1983; June 8, 1983; June 14, 1983; and April 4, 1984. The revised regulations were approved by the Assistant Secretary on October 30, 1984.

(i) New Mexico rules of practice for variances, limitations, variations, tolerances and exemptions parallel to 29 CFR part 1905 which were originally promulgated on August 8, 1975, were revised on April 14, 1981. Subsequently, on June 18, 1981, and May 11, 1983, the State submitted amendments and assurances to its Field Operations Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(j) New Mexico promulgated regulations for on-site consultation on March 7, 1979 and June 1, 1981 with an amendment dated October 17, 1983 and assur-

ances dated April 4, 1984 and July 10, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(k) New Mexico adopted discrimination provisions parallel to 29 CFR part 1977 on March 29, 1982, with an amendment dated June 15, 1983. These supplements were approved by the Assistant Secretary on October 30, 1984.

(l) New Mexico submitted its field operations manual on May 16, 1980, with subsequent amendments dated March 4, 1983; May 11, 1983; May 23, 1983; June 8, 1983; June 16, 1983; June 17, 1983; and June 27, 1983. The manual reflects changes in the Federal program through March 1983. On July 25, 1980, with a subsequent amendment dated July 24, 1984, the State adopted Federal OSHA's Industrial Hygiene Manual. These supplements were approved by the Assistant Secretary on October 30, 1984.

(m) New Mexico on February 28, 1980, submitted a supplement containing a revised plan narrative with further revisions dated June 16, 1983; June 21, 1983; June 27, 1983, April 4, 1984, and July 24, 1984. These supplements were approved by the Assistant Secretary on October 30, 1984.

(n) In accordance with §1902.34 of this chapter, the New Mexico Occupational Health and Safety plan was certified effective December 4, 1984, as having completed all developmental steps specified in the plan as approved on December 4, 1975, on or before December 4, 1978. This certification attests to structural completion, but does not render judgment on adequacy of performance.

[49 FR 44205, Nov. 5, 1984, as amended at 49 FR 48918, Dec. 17, 1984. Redesignated at 59 FR 42497, Aug. 18, 1994]

#### **§ 1952.363 Compliance staffing benchmarks.**

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall*, compliance staffing levels ("benchmarks") necessary for a "fully effective" enforcement program were required for each State operating an approved State plan. In May 1992, New Mexico completed, in conjunction with OSHA, a reassessment of the staffing levels initially established in 1980 and proposed revised benchmarks of 7 safety and 3

## § 1952.364

health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on August 11, 1994.

[59 FR 42497, Aug. 18, 1994]

## § 1952.364 [Reserved]

### § 1952.365 Level of Federal enforcement.

(a) Pursuant to §§ 1902.20(b)(1)(iii) and 1954.3 of this chapter, under which an operational status agreement has been entered into between OSHA and New Mexico, effective October 5, 1981, and based on a determination that New Mexico is operational in issues covered by the New Mexico occupational health and safety plan, discretionary Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) will not be initiated with regard to Federal occupational safety and health standards in issues covered under 29 CFR parts 1910, 1926 and 1928 except as provided in this section. The U.S. Department of Labor will continue to exercise authority, among other things, with regard to:

(1) Complaints filed with the U.S. Department of Labor alleging discrimination under section 11(c) of the Act (29 U.S.C. 660(c));

(2) Enforcement with respect to private sector maritime employment including 29 CFR parts 1915, 1917, 1918, 1919 (shipyard employment; marine terminals; longshoring and gear certification), and general industry and construction standards (29 CFR parts 1910 and 1926) appropriate to hazards found in these employments, which issues have been specifically excluded from coverage under the State plan;

(3) Enforcement in situations where the State is refused and is unable to obtain a warrant or enforce its right of entry;

(4) Enforcement of new Federal standards until the State adopts a comparable standard;

(5) Enforcement of unique and complex standards as determined by the Assistant Secretary;

(6) Enforcement in situations when the State is temporarily unable to exercise its enforcement authority fully or effectively;

## 29 CFR Ch. XVII (7-1-01 Edition)

(7) Enforcement of occupational safety and health standards at all Federal and private sector establishments on military facilities and bases, including but not limited to Kirkland Air Force Base, Fort Bliss Military Reservation, White Sands Missile Range Military Reservation, Holloman Air Force Base, Cannon Air Force Base, Fort Wingate Military Reservation, Fort Bayard Veterans' Hospital, Albuquerque Veterans' Hospital, Santa Fe National Cemetery;

(8) Enforcement of occupational safety and health standards, to the extent permitted by applicable law, over tribal or private sector employment within any Indian reservation and lands under the control of a tribal government;

(9) Enforcement of occupational safety and health standards with regard to Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; and

(10) Investigations and inspections for the purpose of the evaluation of the New Mexico plan under sections 18(e) and (f) of the Act (29 U.S.C. 667 (e) and (f)).

(b) The Regional Administrator for Occupational Safety and Health will make a prompt recommendation for the resumption of the exercise of Federal enforcement authority under section 18(e) of the Act (29 U.S.C. 667(e)) whenever, and to the degree, necessary to assure occupational safety and health protection to employees in New Mexico.

[62 FR 49911, Sept. 24, 1997, as amended at 65 FR 36629, June 9, 2000]

### § 1952.366 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations:

Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210;